IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO. 28 OF 2005

Divya Packing Private Ltd. ..Petitioner.
Vs.
Quality Herbaj Products Pvt. Ltd. ..Respondents.

Mr. Mishra i/by M/s. Bhandary and Bhandary for the Petitioner.

Mr. Indrajeet Kulkarni for the Respondent.

CORAM : A.M. KHANWILKAR, J.
DATED : 9/6/2005

P.C.:

1. Preliminary objection is taken by the counsel for the respondent company. According to him there are two reasons for which this petition ought to be dismissed as not maintainable. The first contention of the learned counsel is that the claim on the basis of which the present petition has been filed is admittedly in respect of amount which is less than one lac rupees. It is argued that in view of the Amendment Act of 2002, it is only in the case where the company is indebted in a sum exceeding one lac rupees, the proceeding under Section 433 and 434 of the Companies Act can be resorted to. The second objection is that the statutory notice has not been

served on the registered address of the company.

. I am not examining the second objection raised on behalf of the respondent company because the same is disputed question of fact for which the petitioner would be entitled to file rejoinder and controvert the objection taken in the reply affidavit of the respondent company. It is enough for this court to deal with the first objection taken on behalf of the respondent company. There is substance in the said objection. Admittedly the claim on the basis of this petition is founded on the balance outstanding amount of Rs.70,087/- only. Further addition of interest at the rate of 18% per annum is made till 31.11.2004 which total comes to Rs.86,055. Even accepting the same as it is, the claim amount is less than Rs.1,00,000/-. In view of the amendment to Section 434, the present action is untenable. Hence, petition disposed of with liberty to the petitioner to take recourse of such remedy as may be permissible by law. Hence, petition disposed of with the aforesaid liberty.

(A.M. KHANWILKAR,J.)